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ABSTRACT

Being knowledgeable about child custody issues is one way teachers of young children can be prepared to meet their noninstructional responsibilities related to divorce. Whereas, in the past, courts have awarded custody to one parent, with increasing frequency divorcing parents are now given joint custody. California law makes joint custody the preferred resolution of custody litigation. Currently, neither a uniform, generally accepted definition of joint custody nor much research concerning joint custody exists. However, preliminary research results presently available indicate positive aspects of joint custody: parents awarded joint custody are generally satisfied with the arrangement, a continuing relationship with both parents is important for children, and children in joint custody generally adjust well. Evidence further suggests that parents can cooperate in raising their children and that litigation after divorce decreases in joint custody cases. Various recommendations (for example, that an interdisciplinary team approach be taken) have been made for advising courts about the best interests of the child in divorce cases. Early childhood educators can be important members of such interdisciplinary teams. Additionally, they can play a valuable role in the classroom by helping children with adjustment problems that originate in divorce. (RH)

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YOURS, MINE OR OURS: CHILD CUSTODY DECISIONS

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YOURS, MINE OR OURS: CHILD CUSTODY DECISIONS

Dr. Betty Spillers Beeson

If you were traveling in space with E.T., you might not be aware of the changes that are taking place in the lives of young children and their families. Terms such as "blended families," "disruptive families," "sequential families," "co-parenting," "combination families," "multi-family," "instant parent," "re-familying" and "reconstituted families" are indicative of the search for new terminology to describe the families of the eighties. Examples of the changing times include the avoidance of the stigma of "step-parent," and the appearance of new words describing court decisions such as "palimony" and "no fault divorce."

Divorce is a devastating experience for all members of the family, compared only to the trauma of death. One of the most significant decisions that must be made at this time of emotional upheaval is that of child custody. Will the children be yours, mine or ours? Custody is defined as "keeping, guardianship, care" (Stein, 1967). Parents have an equal responsibility for the keeping, guarding and caring for the physical, social, intellectual and emotional needs of their children. But how do they divide this responsibility after divorce?

Between 1970 and 1982 the number of children living in one-parent families increased by sixty-seven per cent, from 8.2

million to 13.7 million (Austin American-Statesman, 1983). The children of unwed mothers and deceased parents account for some of these; however, as many as one million children are involved in divorce cases annually. These children are usually quite young, as approximately fifty per cent of all divorces occur in the first seven years of marriage. It is estimated that forty to fifty per cent of the kindergarten and first grade students have divorced parents (Skeen and McHenry, 1980). This is forcing the preschool/kindergarten teacher to develop knowledge and ". . . skills not traditionally considered to be in the purview of the educator." (Schoyer, 1980:7). An article in the Phi Delta Kappan (April 1980: 540) noted that, "Schools today are burdened by the need to cope with an array of social problems not directly related to educating the young. Divorce is one of them." Teachers must be aware of the changing times ". . . divorce is with us . . ." (Black, 1979: 28). One way that teachers can be prepared is by having a knowledge of the current literature on child custody.

Custody patterns have changed over the years, reflecting changing social norms. Until the middle of the nineteenth century, children were considered the property of the father and arbitrarily awarded to him since legally the mother was a non-entity.

Gradually the assumption that the mother's role was to care for the child's physical and psychological needs caused the pendulum to swing. Motherly love was as American as apple pie.

Judges cited the "tender years" doctrine in awarding custody to the mother. Originally intended to cover only very young children, the doctrine of "tender years" was applied in custody disputes involving older children. Approximately ninety per cent of the children in custody litigation were still awarded to the mother (Theus, 1977; Keshet and Rosenthal, 1978; Franklin and Hibbs, 1980; Defrain and Erick, 1981 and Watson, 1981).

The courts have ruled in the past that a child should be given to one rather than both parents. The concept of a psychological bond between one parent and child was supported in the literature (Goldstein et al., 1973 and Charnas, 1982) and was prevalent in deciding custody decisions. However, now it has been suggested that both parents can be psychological parents (Ernst and Altis, 1981 and Alexander, 1977). In a custody dispute, the children were awarded to the so-called innocent spouse.

The emphasis has changed from considering only the rights of the father, to considering the rights of the mother (tender years) to the currently cited doctrine of the "best interests of the child." This awareness of the child's rights as compared to a piece of property to be divided (You take the condo, I'll take the child) was significant. However, deciding what was in the best interests of the child was much more complicated and time consuming than previously used doctrines. Added to this was the "no fault" divorce of the seventies and the push for equality of the sexes.

An increase in the interest of the father's role in child development has caused more fathers to seek custody of their children (Ahrons, 1980 and Alexander, 1977). In response to more parents advocating a balanced solution to custody decisions, joint custody is being explored. It is appearing in the literature, in court decisions, in state statutes and even in the movies, Kramer vs. Kramer. In a search of newspapers and periodicals for joint custody articles, Sell (1979) reported that the first mass dissemination of the joint custody concept was in 1976 when an article in the New York Times was later reprinted in four newspapers with a combined circulation of over four million copies. He reported that the headlines of the articles seemed to be less skeptical of joint custody after 1977.

Research studies of the fifties and sixties involving single parent families usually focused on causal relationships (sex roles or delinquency), didn't specify why one parent was gone (divorce or death) and assumed it was the child who had problems (clinical settings with highly distressed children). Since the seventies, several studies involving single parent families and families with joint custody have been conducted. There is still a scarcity of research concerning joint custody families, partly due to a lack of clear and uniform custody guidelines, and the small and highly selective samples (Jacobson, 1978 and Clingempeel and Reppucci, 1982).

There is no uniform and universally accepted definition of joint custody. It can mean joint physical custody (where the child resides), or joint legal custody (who makes the decisions about religious training, medical attention and schooling) or both joint physical and legal custody. Keshet (1981) described joint custody as "joint decision making." Silver and Silver (1981:81) defined joint custody as ". . . a relatively equal sharing of the child's time . . . financial needs . . . legal decisions and responsibilities . . . there are no guardians, custodians or visitors. There are only parents." The need for a legal definition of joint custody is great.

Clingempeel and Reppucci (1982:103) cite three major differences between legally designated joint custody and single parent custody:

> (a) Joint custody distributes the frequency of interaction more evenly between the child and each parent; (b) joint custody increases the frequency of interaction between divorced parents or, at least, engenders more demands for cooperation on child-related issues; and (c) joint custody results in more frequent alternations in primary caregivers and in caregiving environments with concomitant increases in separations from one parent and reunions with another.

Roman and Haddad (1978) in The Disposable Parent are leading proponents of joint custody. Joint custody is receiving additional support in the current literature (Stack, 1976; Grief, 1979; Abarbanel, 1979; Weiss, 1979 and Grote and Weinstein, 1977. The 1980 California Joint Custody Law states that joint custody is the preferred alternative for child custody (Franklin and Hibbs,

1980 and Silver and Silver, 1981). Initial research indicates that parents who have been awarded joint custody are generally very satisfied with it (Abarbanel, 1979; Grief, 1979; Ahrons, 1980; Fine, 1980 and Steinman, 1981).

In interviews with forty-one divorced parents with joint custody, Ahrons (1980:92) found that eighty-six per cent of her sample were satisfied with their joint custody arrangements. The major reasons given for this satisfaction were ". . .(1) having access to both parents was better for their children; and (2) the joint custody arrangement permitted more flexibility for child care." The latter concurs with Ernst and Altis (1981:675) who mentioned ". . . a respite from parenting pressures. . ." as an advantage.

The importance of a continuing relationship with both parents was substantiated in the literature (Stack 1976; Grief, 1979; Moore and Davenport, 1979; Ahrons, 1980 and Steinman, 1981). Rosen (1979) reported that "free access" visitations were highly valued by the majority of the ninety-two children in her study. Further support for a continuing relationship was found in the Wallerstein and Kelly (1980) study which found that children whose relationship with their fathers was disrupted were more vulnerable to a wide range of problems and Hetherington, et al., (1979) who noted that identification with the father always remained important for boys. Jacobson (1978:357) concluded that ". . . findings

at least tentatively support an alternative point of view which expresses the importance of the continued presence of both parents."

Research tended to indicate that children in joint custody families were generally adjusting well (Abarbanel, 1979; Ramos, 1975; Sell, 1979 and Steinman, 1981). The children had a better self-concept and described fewer feelings of rejection and abandonment that frequently accompanied one parent's departure from the household (Ramos, 1975 and Steinman, 1981). Morganbesser and Nehls (1981), Ernst and Altis (1981) and Clingempeel and Reppucci (1982) suggested that another advantage of joint custody was that the children had both a male and a female role model. A concern expressed was that some children were confused by the transient life style (Ramos, 1975; Morgenbesser and Nehls, 1981 and Steinman, 1981). Another problem experienced by some of the children was a loyalty conflict for the parents, which manifested itself in a hyper-loyalty (Steinman, 1981 and Morgenbesser and Nehls, 1981). Sell (1979:4) in a review of seven joint custody studies reported ". . . one of the most outstanding findings . . . was the lack of dire consequences for the children as predicted by judges and some psychologists."

Whether in a joint custody arrangement or a sole-custody arrangement, a cooperative relationship between parents seemed to be one of the most important factors in the child's adjustment to divorce (Rosen 1979; Steinman, 1981; Ramos, 1975; Watson, 1981 and Wallerstein and Kelly, 1980). Salk (1978:228) reminded us:

". . . when two people are divorcing each other, they are not divorcing their children."

Ernst and Altis (1981:673) stated that "Evidence is accruing that many former spouses can cooperate about co-parenting their children even though they may disagree about everything else." The research indicated that parents were able to separate parental responsibilities and even though a couple were bad marital partners, they could be good parents (Wallerstein and Kelly, 1980; Ahrons, 1980; Grief, 1979; Ernst and Altis, 1981; Keshet, 1981; Watson, 1981 and Franklin and Hibbs, 1980). This contrasted markedly from the opinions expressed by Goldstein, et al., (1973) in the book, Beyond the Best Interest of the Child. This influential book has had an impact on negative reactions to joint custody.

The literature discloses an apparent decrease in additional litigation in joint custody cases (Franklin and Hibbs, 1980; Cleveland, 1982; Sell, 1979 and Clingempeel and Reppucci, 1982). Fewer return cases would be advantageous for the courts (they are already overburdened) and for the children (this is a stressful period). It may be that parents opting for joint custody (because of the necessity to cooperate) would not turn to the courts to resolve a dispute regardless of their custody pattern.

Stress, conflict and uncertainty should be minimized whenever possible. Luepnitz (1979) in a study of college students whose parents had divorced before the subjects were sixteen, reported that half of the sample had experienced the most stress during the marital conflict--before the divorce. This concurs with

Wallerstein and Kelly's (1980) conclusion that divorce is better than continued conflict. Rosen's (1979:25) summary agrees with previous research:

> . . . the disharmony in the parental relationship was more pathogenic for children than the divorce experience itself. This is perhaps most appropriately expressed by an adult member of the sample studied: 'The marriage was the trauma, not the divorce.'

Lamb (1977:172) stated that "The children's interest was best served by the finality and certainty of divorce." Custody and visitation decisions should be made as quickly as possible (Alexander, 1977; Goldstein et al., 1973 and the Austin American-Statesman, 1983).

Judges were able to make custody decisions more quickly and without assistance when only one party to a divorce action could be at fault, and the less ambiguous guideline of sex was applied. Now, judges are forced to decide the "best interests of the child" when neither sex can be favored nor either spouse guilty. Charnas (1982:56) found that "Judges are more readily acknowledging that their area of legal expertise does not equip them to make such decisions solely based upon points of law." There is a wide range of opinions on how to provide the courts with the necessary information to insure the best interests of the child.

Goldstein et al. (1973) advocates the appointment of an attorney to represent all children in custody cases. Kargman (1979) concurs, but specifies a "specially trained" lawyer.

Batts (1979) suggests the diverse choice of a lawyer, or a guardian or a consultant. Alexander (1977) concludes that the appointment of an automatic lawyer for all children is not necessary. She suggests a lawyer in litigation cases, but an expert in mediation cases. The automatic appointment of a lawyer could increase the cost and the length of time for the proceedings. Kargman (1979:78) cautions that ". . . a trial is seldom in the best interests of children."

Batts (1979:96) expresses ". . . a need for educational programs to acquaint legal experts with child growth and development and alert them to the negative potentials of custody and visitation and a need to provide mental health professionals with information about the legal concepts of custody and visitation." There is a need for professional training and education in child custody, but as Charnas (1981:66) suggests, it should be " . . . interdisciplinary not solely a legal or a psychological one."

Several interdisciplinary team approaches for advising the courts are in operation such as the Colorado Children's Diagnostic Center (Jackson et al., 1979 and Warner and Elliott, 1979) and the Reconcillation Court in Santa Clara County, California (Weiss and Collada, 1977). Alexander (1977:378) describes a committee ". . . of specialists such as a child psychiatrist, an educator or clergyman or lawyer, plus a trusted

adult from outside the family who would represent the child's opinions and preferences."

Early childhood educators could play an important role as members of an interdisciplinary team, joining with psychologists, social workers, counselors and legal experts. They already have a knowledge of human growth and development, child psychology, parenting and are trained observers of young children. They must be alert to the changing times. They must be ready and willing to serve the needs of young children and their families both in and out of the classroom.

Research indicates that the early childhood educator can also play a valuable role in the classroom in helping children with adjustment problems due to divorce-related turmoil (Wallerstein and Kelly, 1976 and Heatherington et al., 1978). Hammond (1979:219) advises: "The schools, which are part of the child's natural environment, may be in the best position to provide support for children experiencing this (divorce) crisis." According to Wallerstein and Kelly (1980:14) ". . . school is the most continuous institution in the lives of the many children whose parents divorce . . . ." However, Edelman (1983:6) proclaimed: "Schools are often the last institution in society to change. The school climate often is not able to deal with diversity."

Early childhood educators must be knowlegable of the salient aspects of child custody, divorce and single parent families.

Review of the current literature indicates that the early childhood educator can serve the best interests of the young child by: (1) understanding that children of divorce are not always disturbed; (2) examining stereotyped beliefs that divorce is morally wrong, a child always belongs with his mother, a multi-household situation is always detrimental and couples divorcing could not agree on parenting; (3) modeling acceptance of various life styles; (4) choosing words carefully such as a gift for a special person, not mother or father and discussing a single parent family, not a broken home; (5) believing that co-parented children really do have two actively involved parents, not just a mother or father; (6) supporting both parents by giving them information about their child; and (7) accepting all children and their families with an awareness of their various emotions and problems.

"In the months following a separation and divorce, the teacher often becomes the central--and sometimes only--stable figure in a child's life." (Schoyer, 1980:7). Enlightened professionals will be ready to assume a role both in and out of the classroom that will insure the child's best interests will be met.

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